Supreme Court, U.S.
FILED

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Larry D. Gass & Sandee Gass, pro per
Petitioners

VS.

COMMISSIONER OF INTERNAL REVENUE
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS TENTH CIRCUIT

COMBINED PETITION FOR WRIT OF CERTIORARI

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33 pp

QUESTIONS PRESENTED

(1) The IRS Commissioner has, through presumption, amended the U.S. Constitution and overturned 12 Supreme Court decisions. These presumptions have been upheld by numerous tax court and appellate court decisions.

Do the Commissioner's presumptions take precedence over Supreme Court decisions, or the Constitution?

(2) The Commissioner has stated, and the tax and appellate courts have upheld, that reliance on Supreme Court decisions constitutes frivolous arguments that should be punished with sanctions.

Is reliance on Supreme Court decisions now an offense which is punishable at law?

(3) The Supreme Court has ruled that the income tax is an indirect excise tax. The tax court and appellate court have upheld the Commissioner's presumption that a direct tax can be imposed on the Petitioner's income, without apportionment.

Can the income tax now be collected as a direct tax, without apportionment, in violation of constitutional tax limitations?

(4) Is the income tax on ALL income, or just on all "taxable" income? Is liability based upon presumption or upon statute?

(5) 44 USC 1504(a) - 1510 state that all documents which have general applicability and legal effect, and all documents which prescribe a penalty, shall be published in the Federal Register, and are not legally binding until filed. The tax court and the appellate court have upheld the Commissioner's presumption that Title 27 BATF penalties can be applied to Title 26 income tax.

Are all penalty regulations that apply to Title 26 USC income tax required to be published in the Federal Register?

Are Title 27 penalties also binding on Title 26?

(6) The CFR Index lists a "Parallel Table of Authorities and Rules". In that table under 26 USC 6321, 6331,& 6651 it lists the implementing authority for those sections of the code as authorized for Title 27.

Do these implementing authorities for Title 27 BATF activities also apply to Title 26 income tax, since Title 26 is not listed?

(7) IRC 6654(e)(2)(B) states that if you had no tax liability for the preceding taxable year, then no addition to tax can be imposed under subsection (a) for not filing estimated tax returns for the current year. The tax court and appellate court have upheld the Commissioner's penalty addition to Petitioner's tax, when the Petitioners did not have a tax liability for the previous year.

Is this statute still binding, or can a penalty now be imposed, for not filing estimated returns, even if you had no liability for the preceding taxable year?

If this penalty change was made, would it be required to be published in the Federal Register to be binding?

NO ORAL ARGUMENT IS REQUESTED IN THIS CASE.

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

COMBINED PETITION FOR
WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix "C" to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided our case was October 2, 1997.

A petition for rehearing was filed in this case.

A timely petition for rehearing was denied by the United States Court of Appeals on November 3, 1997, and a copy of the order denying rehearing appears at Appendix "D".

The jurisdiction of this Court is invoked under 28 U.S.C. Sect 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(Emphasis added)

The **United States Constitution** created two classes of taxes.

> **Article 1, Section 2, Clause 3:** "Representatives and direct taxes shall be apportioned among the states which may be included within this union, according to their respective numbers ..."
>
> **Article 1, Section 9, Clause 4:** "No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken."
>
> **Article 1, Section 8, Clause 1:** "The Congress shall have the power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defense and general welfare of the United States: But all duties, imposts, and excises shall be uniform throughout the United states."

Federal Register 44 USC 1505 -1510

1505. Documents to be published in Federal Register

(a) Documents Having General Applicability and Legal Effect.

For the purpose of this chapter every document or order which prescribes a penalty has general applicability and legal effect.

1507. A document required by section 1505(a) of this title to be published in the Federal Register is not valid as against a person who has not had actual knowledge of it until the duplicate originals

or certified copies of the document have been filed with the Office of the Federal Register and a copy made available for public inspection as provided by section 1503 of this title. . . .

The publication in the Federal Register of a document creates a rebuttable presumption (1) that it was duly issued, prescribed, or promulgated:

1510.(b) A codification published under subsection (a) of this section shall be printed and bound in permanent form and shall be designated as the "Code of Federal Regulations."

CFR Parallel Table of Authorities and Rules

A table listing the rulemaking authority for regulations codified in the *Code of Federal Regulations.*

The portion of the table listing the United States Code citations is the most comprehensive, as these citations are entered into the table whenever they are given in the authority citations provided by the agencies.

This table is revised as of January 1, 1997, resulting from additions and removals from regulations published in the *Federal Register.*

26 U.S.C. (1986 I.R.C.)	CFR
6020	27 Parts 53, 70
6321	27 Part 70
6331	27 Part 70
6651	27 Parts 24, 25, 70, 194
7601 - 7606	27 Part 70
7608	27 Parts 70, 170, 296

(Note: all these excerpted sections of 26 USC are authorized only for Title 27 CFR)

STATEMENT OF THE CASE
(Emphasis added in all cites)

This case centers around one main issue. LIABILITY. [See tax court petition para. 4, (2) & (4)] The Commissioner is attempting to tax the Gasses income with a direct tax, without apportionment.

The Commissioner issued a notice of deficiency to each of the petitioners, claiming they were liable for an increase in income tax for 1994. The Gass' (petitioners) claimed that they had no liability, and proceeded to provide proof, based on Supreme Court decisions. The proof was rejected, and they petitioned tax court, and presented the same proof. This proof was dismissed as frivolous and totally without merit by the tax court. They then petitioned appellate court with the same arguments, AGAIN BASED ON SUPREME COURT DECISIONS. Appellate court upheld the tax court decision, that reliance upon Supreme Court decisions constitute frivolous arguments with no merit.

So the main question IS, are the Gasses liable for an income tax? And if so, what created that liability?

(1) The Gasses argue that the income tax is a lawful indirect excise tax, and is Constitutional as written. (despite erroneous allegations to the contrary by the respondent and the lower courts) The income tax is just being misinterpreted and administered in an unconstitutional way, in this case.

First, we must know what an income tax is. The Gasses argue that the Constitution authorized only two types of tax categories, Direct and Indirect. It also states that all direct taxes must be apportioned.

U.S. Constitution Art.1 Sect. 2 Cl. 3, Art. 1 Sect. 9, Cl. 4 & Art. 1 Sect. 8, Cl. 1. (See Const. provisions at 2)

"A tax laid upon the happening of an event, as distinguished from its tangible fruits, is an indirect tax." Tyler v. U.S. 281 US 497, at 502 (1930)

"The conclusion reached in the Pollock case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, **but on the contrary** recognized the fact that taxation on income was, in its nature, an excise, entitled to be enforced as such." Brushaber v. Union Pacific Railroad Co. see Pollock v. Farmer's Loan & Trust Co. 158 US 601 at 637.

"Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain (regulated) occupations and upon corporate privileges; **the requirement to pay such taxes involves the exercise of privilege.**" pg. 151 "It is therefore **well settled** by the decisions of this court that when the sovereign authority has exercised the right to tax a legitimate subject of taxation as an exercise of a franchise or privilege, it is no objection that the measure of taxation is found in the income produced in part from property which of itself is considered non-taxable." pg. 165 Flint v. Stone Tracy Co. 220 US 107 (1911)

The Gasses claim, based on the above four cites. that taxes on income are excise taxes on the exercise of a franchise or privilege. They are not engaged in any franchise or privilege subject to tax.

The Commissioner, and tax court decisions, both upheld by the appellate court (hereinafter called the "legal authorities") have ALL stated that these Supreme Court decisions are:

"tax protestor arguments" that "are totally nonmeritorious, long dismissed by . . .all . . . courts that have heard them. . . .

there is no need to refute these [tax-protestor] arguments with somber reasoning . . . to do so might suggest that these arguments have some colorable merit." (hereinafter called frivolous arguments)(Tax Court decisions. Appendix A & B)

(2) IRC 1 states, "(a) There is hereby imposed on the **taxable income of ----**"

The subject of the tax imposed, is not income, but "taxable income", which can only mean income received from a excise taxable activity. **It does not say**, the tax is on 'gross income', or that the tax is imposed on 'all income from **whatever source**, minus deductions'. It implies, **all** income from whatever TAXABLE SOURCE.

The Gasses argue that they had no "taxable" income from a taxable excise activity from which to figure a deficiency, and therefore no liability for an income tax.

The authorities claim this is a frivolous argument.

(3) In 1894 Congress passed the Revenue Act of 1894. In this act Congress attempted to tax people and property with an indirect tax, along with excise income. The Supreme court found this unconstitutional and ruled:

"It is said that a tax on the whole income of property is not a direct tax in the meaning of the Constitution, but a duty, and, as a duty, leviable without apportionment, whether direct or indirect. **We do not think so**. Direct taxation was not restricted in one breath, and the restriction blown to the winds in another. (pg 622)

First. We adhere to the opinion already announced, that, taxes on real estate being indisputably direct taxes, taxes on the rents or

income of real estate are equally direct taxes.

Second. We are of the opinion that taxes on personal property or on the income of personal property, are likewise direct taxes.

Third. The tax imposed by sections twenty-seven to thirty-seven, inclusive, of the act of 1894, so far as it falls on the income of real estate and of personal property, being a direct tax within the meaning of the Constitution, and, therefore, unconstitutional and void because not apportioned according to representation, all those sections, constituting one entire scheme of taxation, are necessarily invalid." (pg 637) Pollock v. Farmer's Loan & Trust Co. 158 U.S. 601

The Gasses' argument: The income tax was NOT changed to a direct tax, to be applied without apportionment. In 1894 Congress tried to tax real and personal property with an indirect tax, and the Supreme Court ruled it unconstitutional because property can only be taxed with a direct tax through apportionment. The law has not changed. Now the Commissioner is again attempting to impose an income tax (on real property) with a direct tax, without apportionment, which is still unconstitutional.

The income tax was not unconstitutional. Attempting to collect a it as a direct tax without apportionment, is.

The authorities claim reliance on this Supreme Court decision is a frivolous argument that should be punished with sanctions.

(4) The Supreme Court has ruled that a tax on income from real estate is a direct tax and must be apportioned.

"Direct taxes bear immediately upon **persons, upon possessions and enjoyment of rights.** Indirect taxes are levied upon the happening of an event or an exchange." Knowlton v. Moore 178 US 41

"Be that as it may, it is concluded **in all these cases,** from that of Hylton to that of Springer, that taxes on land are **direct** taxes, and in none of them is it determined that **taxes on rents, or income derived from land are not taxes on land."** Pollock vs. Farmers Loan and Trust 158 US 429, at 578,579; Hylton vs. U.S. 3 US 171; Eisner vs. Macomber 252 US 189 at 205 ; Springer vs. U.S. 102 US 586.

"The power to tax real and personal **property and the income from both,** there being an apportionment, is conceded: **that such a tax is a direct tax** in the meaning of the Constitution has not been, and, in our judgement, cannot be successfully denied: ..." (pg 634) "We adhere to the opinion already announced, that, taxes on real estate being **indisputably** direct taxes, taxes on **the rents or income of real estate are equally direct taxes."** (pg 601, 637) Pollock v. Farmers Loan and Trust rehearing 158 US 601

The authorities have successfully denied this and have ruled that direct taxes on real estate can now be collected as an indirect tax.

" . . . and therefore the Amendment (16th) at least impliedly makes such wider significance a part of the Constitution -- a condition which clearly

demonstrates that the purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended, that is the **PREVENTION** of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself and thereby **to take an income tax out of the class of excises, duties and imposts and place it in the class of direct taxes."** Brushaber v. Union Pacific R.R. 240 U.S. 1, 19

The 16th amendment was passed to prevent the income tax from being applied as a direct tax.

The Gasses argue that all their income was from real estate, and this income must be taxed with a direct tax, with apportionment, if it is to be taxed. These Supreme Court rulings are still valid law and have never been overturned, by the Supreme Court. They HAVE been overturned by the lower courts. ALL income received by the Gasses in 1994 was from real estate. This income, IF taxed, must be with a direct tax by apportionment. This is **not** a tax protestor argument that has been dismissed by the courts. This is a Supreme Court decision that has been dismissed by the courts. The Commissioner has not produced any statute that imposes a tax on non-corporate income received from real estate, that makes the Gasses liable. The authorities have presented no finding of fact to the contrary. The IRS is relying on unfounded and erroneous presumption.

The authorities claim that reliance on the above Supreme Court cites constitute frivolous arguments without merit and should be punished with sanctions.

(5) THE SUPREME COURT HAS RULED THAT THE 16TH AMENDMENT IS VALID, BUT DID, NOT GRANT ANY NEW POWERS OF TAXATION.

"By the previous ruling, it was settled that the Sixteenth Amendment conferred no new power of taxation, but simply prohibited the previous complete and plenary power of income taxation, possessed by Congress, from the beginning, from being taken out of the category of indirect taxation, to which it inherently belonged..." Stanton vs. Baltic Mining Co. 240 US 103, at 112 (1916)

"The Sixteenth Amendment . . . does not extend the taxing power to new or excepted subjects . . ." Peck & Co. v. Lowe 247 U.S. 165, 172 (1918)

"The Sixteenth Amendment must be construed in connection with the taxing clauses of the original Constitution and the effect attributed to them before the Amendment was adopted." Eisner vs. Macomber 252 US 189 at 205 (1920).

The Gasses argue, based on the above cites, that the 16th amendment did NOT make the income tax a direct tax to be applied without apportionment. It just **reemphasized** the fact that the income tax was an indirect tax, and could be collected without apportionment. It is and always was an indirect tax, applied to an excise taxable activity or privilege.

The authorities claim these Supreme Court cites are frivolous arguments and reliance upon them is a punishable offense.

(6) CONGRESSIONAL RECORD STATES THAT THE INCOME TAX IS AN EXCISE TAX APPLIED ONLY TO CERTAIN REVENUE TAXABLE ACTIVITIES AND PRIVILEGES.

"So the amendment (16th) made it possible to

bring investment income within the scope of the general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income. The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income they produce. The **income is not the subject of the tax: it is the basis for determining the amount of tax."** From Congressional Record - House 3-27-'43. pg 2580

"The Supreme Court, in a decision written by Chief Justice White, first noted that the Sixteenth Amendment did not authorize any new type of tax, nor did it repeal or revoke the tax clauses of Article I of the Constitution, quoted above. Direct taxes were, notwithstanding the advent of the Sixteenth Amendment, still subject to the rule of apportionment and indirect taxes were still the subject of the rule of uniformity. Rather, the Court found that the Sixteenth Amendment sought to restrain the Court from viewing an income tax as a direct tax because of its close effect on the underlying property." (pg 5) From a report by The Congressional Research Service. Report No. 84-168A, 784 / 725 titled "Some Constitutional Questions Regarding the Federal Income Tax Laws", dated May 25, 1979 and updated Sept. 26, 1984

The Gasses' argument: The income tax is declared by Congress to be an indirect excise tax, applied only to a taxable activity. They are not involved in any taxable activity. Congress writes the

laws, and the Congressional Record and Reports state that the income tax is based on taxable activities and privileges. They Gasses did have income for 1994, from real estate sales and rental, but it was not "taxable income" since they were not involved in any excise taxable activity or privilege, (Revenue taxable activity) on which a tax was imposed by the IRC. The allegation of their income being "taxable" income, has not been statutorily proven to be from a taxable activity. It has only been alleged presumptively. The Gasses concede that if the income had been received as a corporation or in connection with a taxable activity, then it would have been taxable with an income tax. The Gasses are not a corporation.

The authorities claim that reliance on Congressional Record and Reports constitute frivolous arguments punishable by law.

(7) TREASURY REGULATION 1.1-1 states:

"Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States. . ."

INDIRECT TAX ??? If you read this Treasury regulation in light of the income tax as an indirect excise tax on activities, you could even expand it to read, *the Code imposes a tax on everyone in the world (citizen, alien, resident, nonresident, etc) that is subject to the tax.* It would apply to anyone involved in a excise taxable activity in the United States, because the tax is on the activity, not on the person engaged in the activity. It fits perfectly, and is legal and constitutional.

DIRECT TAX ??? BUT, if you interpret this regulation in light of the income tax as a direct tax on property (income), then the IRS is attempting to collect it in violation of the constitutional requirement of apportionment and in contradiction to the Supreme Court

decisions. (The IRS is attempting to collect an income tax, from real estate, as a direct tax without apportionment.)

The authorities claim this is a frivolous argument.

(8) IRC 7701 (14) defines "Taxpayer". "The term "taxpayer" means any person subject to any internal revenue tax."

The Gasses argue that they are not subject to or liable for the income tax and therefore do not fall into the definition of taxpayer. The entire IRC (Internal Revenue Code) applies only to those SUBJECT TO any tax. They are not subject to or liable for the income tax. (Not engaged in a taxable activity) They believe that the Treasury regulations and the IRC are correct as written, when viewed correctly from the constitutional position of an indirect tax.

The authorities claim this is a frivolous argument, and that presuming someone to be a "taxpayer", is enough to make them liable for a tax.

(9) No liability has been proven in this case.

The Commissioner has erroneously and wrongfully classified the Gasses as involved in a taxable activity, an activity unknown to them, which presumptively creates a liability for income tax. They can only guess what activity it is that the Commissioner alleges they are involved in and that makes them subject to the code. (corporation?, cigarette manufacture?, subject of Public Salary Tax Act?, alcohol distillation? any BATF activities?) The Commissioner refuses to provide the statutory authority or describe what activity it is, that makes the Gasses subject to and liable for an income tax.

The Commissioner's only basis of liability is presumption, since the subject of the tax, or basis for the notice of deficiency is unknown to the Gasses.

Since no statute has been produced imposing a tax on the Gasses activity, then there is no liability, and with no liability, there can be no deficiency. They have requested that the Commissioner provide the statute that made them liable many times in the past, with no response. **Therefore, the notice of deficiency is invalid** and should be rescinded, as they have requested.

The Gass' argument: The Commissioner is applying a direct tax on their income, under the guise of an indirect tax. The basis of all income tax liability is a statute imposing the tax on an excise activity or privilege. The Commissioner refuses to provide any statutory proof of liability. IRC 6212(a) states,

> "If the Secretary determines that there is a deficiency in respect of any tax **IMPOSED** by title A or B, ... he is authorized to send notice of such deficiency to the "taxpayer" by certified mail or registered mail."

The only tax imposed, is not on "income", but on "taxable income", which implies it was received from an excise taxable activity. The Gass' real estate income for 1994 is only taxable with a direct tax, by apportionment, **according to Congress and the Supreme Court,** since it was not received from a revenue taxable activity. Where in the statutes is an excise tax imposed on their activity? **If** there was a statute, then they would be made liable and would be subject to IRC 6001 and 6011, where it states that **if** you are **made** liable for any tax **imposed,** then you must file a return. They have not been made liable as claimed by the Commissioner in her motions to the court, quoting IRC 61(a)(3) and 1001(a) as their basis for liability. These statutes are definition and determination statutes and do not impose a tax on anything.

The authorities claim this is a frivolous argument. They claim that presumption is all the liability needed for a deficiency notice, and to make you a liable "taxpayer".

(10) Additions to the Gasses' tax have been added under IRC 6651 and 6654.

All authority for penalty regulations must be filed with the Federal Register before they have the effect of law. (IRC 7805 & 44 USC 1504 - 1510) (see statutory provisions at 2) All regulations that ARE published, are then recorded in the Code of Federal Regulations (CFR) and included in a parallel table to show which statutes have been authorized for certain portions of the United States Code (USC).

The "Parallel Table of Authorities and Rules" codified in the CFR, (see statutory provisions at 2) shows the authority for penalty statutes. As can be seen from the table, the authority to issue penalties under USC 6651, applies only to Title 27 Part 70 BATF activities, and not to Title 26 Income Tax. Any penalty authority for Title 26 must be first filed with the Federal Register.

None has been filed.

The Gasses are not involved in any BATF activities and never have been and therefore are not liable for this penalty.

The authorities have ruled this to be a frivolous argument.

The IRS and Tax Court are also attempting to assess the Gasses under IRC 6654. This section has three conditions before it can be implemented.

6654 (e)(2) states, "No addition to tax shall be imposed under subsection (a) for any taxable year if -

(A) the preceding taxable year was a taxable year of 12 months,

(B) the individual did not have a tax liability for tax the preceding taxable year, and

(C) the individual was a citizen or resident of the United States throughout the preceding taxable year."

Condition (A). The Gasses were not involved in a taxable activity the preceding year (1993) and therefore did not have a 'taxable year', as defined in IRC 441 or 7701(b)(9). The Gasses were therefore not 'taxpayers' as defined in IRC 7701 (14)(subject to the IRC), and a 'taxable year' can only apply to a 'taxpayer'.

Condition (B). The Gasses did not have a tax liability for 1993, the preceding year, and

Condition(C). The Gasses had no preceding 'taxable' year. Therefore the 3 conditions have not been met.

This alleged additional liability would be invalid even if they were subject to the IRC, since they had no (B) liability for the preceding year, in which a return was filed under erroneous understanding. The IRS is violating its own statutory collection and penalty procedures.

The authorities claim this is a frivolous argument. The Commissioner implies that penalty regulations for 26 U.S.C. 6651, do not have to be published in the Federal Register, for Title 26 income tax, for them to be binding on the public. They claim that Title 27 penalties are also binding on Title 26, even if they are not published.

And that even if you did not have a tax liability the preceding year, you still have to file estimated returns or suffer a penalty under IRC 6654. All that is needed is presumption. No proof required.

(11) Our system of taxation is based upon voluntary compliance and self assessment, and not upon distraint. Flora v. U.S. 362 US 145, at 176 (1960)

Immediately after the Tax court decision was rendered in this case, the IRS commenced collection of the alleged tax, by distraint, through liens under USC 6321, and levies under USC 6331.The Gasses rely on the above Supreme Court decision, and believe that this decision was based on the fact that in the CFR Index "Parallel Table of Authorities" it shows that the lien and levy authority of USC 6321 & 6331 apply to Title 27 BATF activities and not to Title 26 income tax. This is the basis of the Supreme Court decision that income taxes are not collected by distraint. It only applies to Title 27.

To engage in Title 27 BATF activities is voluntary. It is not mandatory to engage in an excise taxable activity. But, if you do engage in these BATF voluntary activities, and you do not pay the tax, then it can be collected by distraint under Title 27 BATF authority. Any lien or levy regulations, **according to the CFR Index**, apply ONLY to Title 27 BATF activities and NOT to Title 26 income taxable activities.

Therefore, any collection by distraint (liens or levies) of Title 26 income tax would also be in contradiction to the *Flora* decision by this court, and make the USC invalid.

The authorities have ruled that this Supreme Court decision is also frivolous and without merit, along with all the other Supreme Court decisions. They claim that Title 26 income tax can now be collected, through distraint, under Title 27, and the authority for all liens and levies, for Title 27, also apply to Title 26, and are made legal and binding through the Commissioner's presumption and are upheld by the courts. Apparently the USC, clarified by the CFR Index, confirmed by the *Flora* decision, are again just frivolous tax protestor arguments that are punishable with sanctions if relied upon.

(12) The appellate court affirmed the Gasses' arguments in the tax court and ruled:

"On appeal petitioners argue that the tax court erred in both cases in failing to determine that federal income tax is an indirect tax and therefore that the imposition of the taxes upon these petitioners is in violation of constitutional limitations. We AFFIRM."
(APPENDIX C)

They ruled this way, in this first part of the order, because all the Gasses' income was from real estate and is only taxable with a direct tax through apportionment. This upholds the Supreme Court decisions.

BUT, then in the second part of the decision, the appellate court rules that their own decision, in the first part, based on Supreme Court decisions, is a frivolous argument. Namely, that the Gasses argue that they are not subject to these indirect taxes (never called unlawful by Gasses) and that they are not engaged in any excise taxable activity. The appellate court then agrees with the tax court that these are frivolous arguments and that this appeal is meritless, and sanctions of $1500 each were imposed on the Gasses.

The appellate court overturned the first half of their own decision, which was based on Supreme Court decisions, with the second half of their own order.

So, are Supreme Court decisions frivolous or not?

SUMMARY

The Gasses are only relying on Supreme Court decisions and the statutes. They have never claimed that they did not receive income. They are claiming that this income was 100% from real estate and that the Supreme Court has ruled that income from real estate can only be taxed with a direct tax through apportionment. Are Supreme Court decisions no longer valid and is the Constitution just pretty words on paper?

REASONS FOR GRANTING THE PETITION

(1) The United States Court of Appeals, has, in these 2 cases, issued rulings that overturn Supreme Court decisions and violate the taxing limitations placed on the government by the U.S. Constitution.

To allow these lower court decisions to stand would be giving the IRS Commissioner the power to amend the constitution and to overturn Supreme Court cases at will.

(2) If the Supreme Court does NOT hear this case, it is admitting that it's decisions are indeed frivolous and totally without merit, along with the constitution, as stated by the lower court decisions.

If lower court decisions take precedence over Supreme Court decisions, then the Supreme Court has no value in our legal system, and the constitution is null and void.

(3) The USC and CFR are a compilation of our laws that are binding on the American people. If authorities for penalty statutes, and liens and levies, do not have to be published in the Federal Register and subsequently in the CFR, to put the people on notice, then there is no need of any codes or regulations.

Also, if the lien and levy authority for Title 27 also applies to all other Titles, then there is no need for a *Code of Federal Regulations* codified by USC title. One Title would be all that was needed.

If the Supreme Court does not hear this case, it will be admitting that the USC, codified under the CFR, is no longer valid or binding on the government or the people, and the IRS commissioner can make any law he/she wants, through presumption alone.

(4) If the Supreme Court does not hear this case, it is giving free reign to the lower courts to impose sanctions

on the American people for relying on Supreme Court decisions. If the American people are now punished for relying on Supreme Court decisions in the court systems, the only result is anarchy.

Larry D. Gass and Sandee Gass hereby request that this court hear this case in the name of justice, and due to the effect this has on the general public.

The IRS is abusing its delegated authority. The tax code does not need reforming to prevent abuse to the general public, it just needs to be enforced in conformance with the present limitations placed on it

The Gasses also request that all costs be awarded to them for all expenses in this case, and request the reversal of sanctions applied by the appellate court.

The Gasses also request damages under 26 USC 7433 and IRC 7433 for unauthorized collection actions under USC 6321, 6331, and 6651.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

Larry D. Gass
C/O POB 140
Capulin, Colorado 81124
(719) 852-3290

Sandee Gass

Date: 18 December, 1997

CITATION OF COURT ORDER

UNITED STATES TAX COURT
Washington, DC 20217

Larry D. Gass, Petitioner	)	
	)	
v.	)	
	)	Docket No: 14540-96
COMMISSIONER OF	)	
INTERNAL REVENUE	)	
Respondent.	)	

ORDER AND DECISION

This case is calendared for trial at the Session of the Court commencing April 21, 1997 in Albuquerque, New Mexico. On December 30, 1996, respondent filed a Motion for Summary Judgement requesting the Court to find that there is a deficiency in petitioner's income tax for the taxable year 1994 in the amount of $27,077, an addition to the tax under I.R.C. 6651(a)(1) in the amount of $6,769, and an addition to tax under I.R.C. 6654 in the amount of $1,394.. On January 15, 1997, petitioner filed a cross-Motion for Summary Judgement. The moving documents reveal that the petitioner is a tax protestor and that his arguments are totally nonmeritorious, long dismissed summarily by this Court and all other courts which have heard them. See Abrams v. Commissioner, 82 T.C. 403, 406-407 (1984); Rowlee v. Commissioner, 80 T.C. 1111 (1983); Martin v. Commissioner, T.C. Memo. 1990-560; Fox v. Commissioner, T.C. Memo. 1993-277. As stated by the Fifth Circuit Court of Appeals, there is "no need to refute theses [tax-protestor] arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable

merit." Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984). We agree with the position taken by respondent in her Motion for Summary Judgement and Notice of Objection to petitioner's Motion for Summary Judgement. Consequently, it is hereby

ORDERED that the respondent's Motion for Summary Judgement, filed December 30, 1996, is granted. It is further

ORDERED that petitioner's cross-Motion for Summary Judgement. filed January 15, 1997, as supplemented, is denied. It is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioner for the taxable year 1994 in the amount of $27,077.00

That there is an addition to the tax due from the petitioner for the taxable year 1994, under the provisions of I.R.C. section 6651(a)(1), in the amount of $6,769.00

That there is an addition to the tax due from the petitioner for the year 1994, under the provisions of I.R.C. section 6654, in the amount of $1,394.00.

(Signed) Julian I. Jacobs

Entered: Feb 7 1997

CITATION OF COURT ORDER

UNITED STATES TAX COURT
Washington, DC 20217

Sandee Gass, Petitioner	)	
	)	
v.	)	
	)	Docket No: 16564-96
COMMISSIONER OF INTERNAL REVENUE	)	
Respondent.	)	

ORDER AND DECISION

This case is calendared for trial at the Session of the Court commencing April 21, 1997 in Albuquerque, New Mexico. On December 27, 1996, petitioner filed a Motion for Summary Judgement. On January 21, 1997, respondent filed a Notice of Objection to petitioner's Motion for Summary Judgement and concurrently filed a cross-Motion for Summary Judgement requesting the Court to find that there is a deficiency in petitioner's income tax for the taxable year 1994 in the amount of $17,442, an addition to the tax under I.R.C. section 6651(a)(1) in the amount of $4,361, and an addition to tax under I.R.C. 6654 in the amount of $898. The moving documents reveal that the petitioner is a tax protestor and that her arguments are totally nonmeritorious, long dismissed summarily by this Court and all other courts which have heard them. See Abrams v. Commissioner, 82 T.C. 403, 406-407 (1984); Rowlee v. Commissioner, 80 T.C. 1111 (1983); Martin v. Commissioner, T.C. Memo. 1990-560; Fox v. Commissioner, T.C. Memo. 1993-277. As stated by the Fifth Circuit Court of Appeals, there is "no need to refute theses [tax-protestor] arguments with

somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984). We agree with the position taken by respondent in her Motion for Summary Judgement and Notice of Objection to petitioner's Motion for Summary Judgement. Consequently, it is hereby

ORDERED that the petitioner's Motion for Summary Judgement, filed December 27, 1996, is denied. It is further

ORDERED that the respondent's cross-Motion for Summary Judgement,. filed January 21, 1997, is granted. It is further

ORDERED AND DECIDED that there is a deficiency in income tax due from petitioner for the taxable year 1994 in the amount of $17,442.00

That there is an addition to the tax due from the petitioner for the taxable year 1994, under the provisions of I.R.C. section 6651(a)(1), in the amount of $4,361.00

That there is an addition to the tax due from the petitioner for the year 1994, under the provisions of I.R.C. section 6654, in the amount of $898.00.

(Signed) Julian I. Jacobs

Entered: Feb 6 1997

APPENDIX B

CITATION OF COURT ORDER

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Larry D. Gass and Sandee Gass,	)	Filed - United States Court of Appeals Tenth Circuit
Petitioner - Appellant,	)	OCT 2 1997
	)	PATRICK FISHER
	)	Clerk
v.	)	
	)	
COMMISSIONER OF INTERNAL REVENUE	)	No. 97-9006 & 97-9007
Respondent - Appellee	)	(U.S. Tax Court No. 14540-96 & 16564-96)

ORDER AND JUDGEMENT*

Before TACHA, BALDOCK, and LUCERO, Circuit Judges.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

* This order and judgement is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgement may be cited under the terms and conditions of 10th Cir. R. 36.3.

These appeals are from orders of the tax court upholding deficiency determinations and additions to tax asserted against taxpayer appellants Sandee and Larry Gass. On appeal petitioners argue that the tax court erred in both cases in failing to determine that the federal income tax is an indirect tax and therefore that the imposition of the taxes upon these petitioners is in violation of constitutional limitations. We AFFIRM.

Taxpayers Larry and Sandee Gass, petitioners herein, received income from the rental and sale of property in 1994. Appellee in this case, the Commissioner of the Internal Revenue Service, sent separate notices of deficiencies to each taxpayer asserting deficiencies in their 1994 income taxes and additions to tax under sections 6651 and 6654 of the Internal Revenue Code. The additions to tax were based on the taxpayers' failure to file timely returns and to pay estimated taxes for the year involved. In lieu of paying taxes, appellant taxpayers filed petitions with the United States Tax Court in which they alleged errors in the determination of these deficiencies and in the additions to tax. The taxpayers' arguments on appeal here are largely the same arguments that were presented to the tax court below. Taxpayers have the burden of proving that the determination is erroneous and that the additions to tax were improperly assessed.

These taxpayers did not contest below nor do they contest here that they have received the income attributed to them in the notices of deficiency and that they have failed to pay the taxes and additions to tax assessed against them by appellee. The only arguments put forward by these taxpayers are related to their allegations that the taxes imposed are unlawful *(Note: not claimed by petitioners)* indirect taxes and that taxpayers are not subject to these taxes and additions to tax. They further argue that they are not engaged in any taxable

activities. We agree with the tax court that these arguments are frivolous and that this appeal is meritless. The order of the tax court is affirmed. Appellant's motions for the award of costs and damages is denied. Appellee's motion for sanctions is granted. We hereby impose against each appellant a sanction of $1,500 pursuant to 28 U.S.S. section 1912 and Fed. Rule App. P. 38 for the reasons stated in Casper v. C.I.R., 805 F.2d 902 (10th Cir. 1986)

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge

APPENDIX C

CITATION OF COURT ORDER

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Larry D. Gass and Sandee Gass,	)	
Petitioners - Appellants,	)	
	)	
v.	)	No. 97-9006 & 97-9007
	)	
COMMISSIONER OF INTERNAL REVENUE	)	
Respondent - Appellee	)	

ORDER
Filed November 3, 1997

Before TACHA, BALDOCK, and LUCERO, Circuit Judges.

Appellants' consolidated petition for rehearing is denied by the panel that rendered the decision.

Entered for the Court
PATRICK FISHER,
Clerk of Court

by: s/ Mtalean
Deputy Clerk

APPENDIX D